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BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of:

THE COMMISSIONER OF BUSINESS
OVERSIGHT,

Complainant,

vs.

AMERILINK ESCROW, INC., VINH PHAN
AND QUANG PHAN, ALSO KNOWN AS,
ADAN PHAN.

Respondents.

) ESCROW LICENSE NO.: 963-2676

) ACCUSATION IN SUPPORT OF:

) 1) ORDER BARRING VINH PHAN AND
) QUANG PHAN, ALSO KNOWN AS
) ADAN PHAN, FROM ANY POSITION
) OF EMPLOYMENT, MANAGEMENT,
) AND CONTROL OF ANY ESCROW
) AGENT

) 2) ORDER REVOKING AMERILINK
) ESCROW, INC.'S ESCROW AGENT
) LICENSE

1 The Commissioner of Business Oversight (Commissioner) is informed and believes and
2 based upon such information and belief, alleges and charges as follows:

3 **I.**

4 **Introduction**

5 1. Amerilink Escrow, Inc. (Amerilink) is an escrow agent licensed by the Commissioner
6 pursuant to the Escrow Law (Financial Code section 17000 et seq.), with its principal place of
7 business at 16742 Gothard Street, Suite #214, Huntington Beach, CA 92647.

8 2. Vinh Phan was, at all relevant times, President, registered agent, and escrow officer at
9 Amerilink.

10 3. Quang Phan, also known as Adan Phan (Adan Phan), was at all relevant times, an
11 employee and escrow assistant at Amerilink.

12 **II.**

13 **June 12, 2017 Examination**

14 4. On or about June 12, 2017, a regulatory examination of the books and records of
15 Amerilink was conducted by the Commissioner. The regulatory examination disclosed that
16 Amerilink, Vinh Phan and Adan Phan violated multiple provisions of the Escrow Law as detailed
17 below:

18 **A. Generating False Documents In Connection With Escrow Affairs**

19 5. Amerilink, Vinh Phan and Adan Phan generated false documents in connection with
20 escrow affairs, in violation of Financial Code section 17414, subdivision (a)(2), as follows:

21 **1. Escrow #14453-VP**

22 6. In Escrow #14453-VP, Adan Phan was the escrow officer. The buyer in Escrow
23 #14453-VP was JVS Development, LLC (JVS), a limited liability company in which Vinh Phan was
24 a member. The seller in Escrow #14453-VP was Brookhurst Town Center, LLC (Brookhurst). On
25 or about February 14, 2017, Amerilink received an escrow amendment signed only by JVS that
26 instructed Amerilink to show that \$6,040,000.00 in deposits were made by JVS in this transaction,
27 but the escrow amendment also acknowledged that no actual deposit was made.
28

1 7. On or about February 14, 2017, Adan Phan generated a letter to the lender of Escrow
2 #14453-VP, Artemis Realty Capital Advisors, LLC (Artemis), misrepresenting to Artemis that the 8
3 escrow receipts generated by Amerilink in the letter evidenced JVS' deposit of \$6,040,000.00 in
4 funds into Escrow #14453-VP, when in fact JVC never deposited any money into Amerilink for the
5 transaction. Furthermore, the 8 escrow receipts generated by Adan Phan and Vinh Phan that were
6 contained in the February 14, 2017 letter to Artemis belonged to other escrow files unrelated to
7 Escrow #14453-VP and were for different dates and amounts as follows:

8 a. Amerilink, Adan Phan and Vinh Phan represented to Artemis that escrow receipt
9 #2123 was issued on 8/5/16 to receipt JVS' deposit of \$500,000.00; in fact, receipt #2123 was issued
10 on 8/15/16 to receipt a deposit of \$32,999.09 in an unrelated escrow transaction, Escrow #14384-
11 VP;

12 b. Amerilink, Adan Phan and Vinh Phan represented to Artemis that escrow receipt
13 #2125 was issued on 8/9/16 to receipt JVS' deposit of \$1,000,000.00; in fact, receipt #2125 was
14 issued on 8/17/16 to receipt a deposit of \$61,383.45 in an unrelated escrow transaction, Escrow
15 #14397-VP;

16 c. Amerilink, Adan Phan and Vinh Phan represented to Artemis that escrow receipt
17 #2126 was issued on 8/10/16 to receipt JVS' deposit of \$1,000,000.00; in fact, receipt #2126 was
18 issued on 8/17/16 to receipt a deposit of \$10,809.46 in an unrelated escrow transaction, Escrow
19 #14387-VP;

20 d. Amerilink, Adan Phan and Vinh Phan represented to Artemis that escrow receipt
21 #2127 was issued on 8/18/16 to receipt JVS' deposit of \$500,000.00; in fact, Amerilink canceled this
22 escrow receipt and never deposited JVS' check into the trust account;

23 e. Amerilink, Adan Phan and Vinh Phan represented to Artemis that escrow receipt
24 #2132 was issued on 9/15/16 to receipt JVS' deposit of \$1,000,000.00; in fact, receipt #2132 was
25 issued on 8/19/16 to receipt a deposit of \$101,514.37 in an unrelated escrow transaction, Escrow
26 #14445-VP;

27 f. Amerilink, Adan Phan and Vinh Phan represented to Artemis that escrow receipt
28 #2143 was issued on 10/18/16 to receipt JVS' deposit of \$1,000,000.00; in fact, receipt #2143 was

1 issued on 8/26/16 to receipt a deposit of \$7,133.81 in an unrelated escrow transaction, Escrow
2 #14088-VP;

3 g. Amerilink, Adan Phan and Vinh Phan represented to Artemis that escrow receipt
4 #2146 was issued on 10/20/16 to receipt JVS' deposit of \$800,000.00; in fact, receipt #2146 was
5 issued on 8/29/16 to receipt a deposit of \$20,000.00 in an unrelated escrow transaction, Escrow
6 #13641-35812-VP; and

7 h. Amerilink, Adan Phan and Vinh Phan represented to Artemis that escrow receipt
8 #2207 was issued on 12/12/16 to receipt JVS' deposit of \$240,000.00; in fact, receipt #2207 was
9 issued on 9/26/16 to receipt a deposit of \$57,424.35 in an unrelated escrow transaction, Escrow
10 #14448-VP.

11 **2. Escrow #14762-VP**

12 8. In Escrow #14453-VP, the seller, Brookhurst, made a deposit of \$1,000,000.00 into
13 Escrow #14453-VP. However, Amerilink did not receipt Brookhurst's funds into Escrow #14453-
14 VP. Instead, \$700,000.00 of Brookhurst's \$1,000,000.00 deposit was instead receipted and posted as
15 a deposit from Vinh Phan in Escrow #14762-VP, an escrow transaction in which Vinh Phan is the
16 buyer. On February 22, 2017, escrow receipt #2500 was generated by Vinh Phan and Adan Phan to
17 represent a deposit of \$700,000.00 made by Vinh Phan into Escrow #14762-VP. Included in the
18 escrow file of Escrow #14762-VP was a fax wire confirmation dated February 22, 2017, that
19 evidenced that Vinh Phan wired \$700,000.00 into Amerilink's trust account. However, the February
20 22, 2017 fax wire confirmation was not an actual wire confirmation, but a document generated by
21 Vinh Phan and Adan Phan to falsify evidence of Vinh Phan's \$700,000.00 deposit. A review of
22 Amerilink's trust account bank records revealed that Amerilink never received a wire transfer from
23 Vinh Phan in the amount of \$700,000.00 on February 22, 2017.

24 **3. Escrow # 14721-VP**

25 9. In Escrow #14721-VP, the buyers made a deposit of \$124,750.00 into Amerilink
26 through wire transfer on December 7, 2016. The \$124,750.00 deposit was receipted by Vinh Phan on
27 December 8, 2016 and posted as escrow receipt #2382 in Escrow #14721-VP. However, a review of
28 the escrow file for Escrow #14721-VP did not contain a copy of escrow receipt #2382. Amerilink

1 subsequently produced a copy of escrow receipt #2382 to the Commissioner, which was a voided
2 receipt. A review of the escrow ledger for Escrow #14721-VP showed that escrow receipt #2382 was
3 cancelled by Vinh Phan and on December 20, 2016, posted into Escrow #14453-VP as escrow
4 receipt #2377, reflecting a \$124,750.00 deposit from the buyers of Escrow #14453-VP, when in fact
5 the deposit belonged to the buyers in Escrow #14721-VP.

6 **B. Unauthorized Disbursements of Trust Funds**

7 10. Amerilink, Vinh Phan and Adan Phan knowingly or recklessly engaged in activity
8 that constitutes theft or fraud in escrow transactions in violation of Financial Code section 17414,
9 subdivision (a)(1) and made unauthorized disbursements of trust funds in violation of Financial
10 Code section 17414, subdivision (a)(1) and California Code of Regulations, title 10, sections 1738
11 and 1738.2 as follows:

12 (a) On or about December 7, 2016, the buyer in Escrow #14721-VP deposited
13 \$124,750.00 into Amerilink through wire transfer. Vinh Phan receipted the buyer's deposit and
14 posted the deposit in Escrow #14721-VP on or about December 9, 2016. On or about December 20,
15 2016, Vinh Phan cancelled the buyer's deposit in Escrow #14721-VP and reposted it as a buyer
16 deposit in Escrow #14453-VP despite receiving no written instructions from the buyer in Escrow #
17 14721-VP authorizing the disbursement of their deposit from Escrow #14721-VP into Escrow
18 #14453-VP for the use of the buyer in Escrow #14453-VP.

19 (b) On or about February 22, 2017, the seller in Escrow #14453-VP, Brookhurst,
20 deposited \$1,000,000.00 into Amerilink through a wire transfer. However, Amerilink did not receipt
21 Brookhurst's deposit into Escrow #14453-VP. Instead, \$700,000.00 of Brookhurst's deposit was
22 diverted into Escrow #14762-VP and receipted by Vinh Phan and Adan Phan as a \$700,000.00
23 deposit from Vinh Phan, who was the buyer in the Escrow #14762-VP. There were no written
24 instructions from Brookhurst authorizing the disbursement of their deposit from Escrow #14453-VP
25 into Escrow #14762-VP for use by Vinh Phan.

26 **C. Debit Balances**

27 11. Amerilink caused debit balances to exist in escrow accounts in violation of California
28 Code of Regulations, title 10, section 1738.1 as follows:

(a) In Escrow #14453-VP, the seller was due proceeds of \$5,153,508.29 at the close of escrow in accordance to written instructions; however, Amerilink closed Escrow #14453-VP despite lacking sufficient trust funds to disburse the \$5,153,508.29, resulting in a debit balance in Escrow #14453-VP. To date, the seller has only been able to recover \$2,844,895.00 from Amerilink. As a result, Escrow #14453-VP has a debit balance of \$2,308,613.29.

(b) A review of Amerilink's escrow trial balance as of May 2, 2017, reflected current escrow liability of \$805,893.44. Despite having \$805,893.44 in trust liability, Amerilink's trust account bank statement as of May 2, 2017, reflected a balance of only \$66,437.93, resulting in a debit balance of \$739,455.51.

D. Liquid Asset and Tangible Net Worth Deficiency

12. Pursuant to Financial Code section 17210, all licensees under the Escrow Law are required to maintain, at all times, liquid assets in the amount of at least \$25,000.00 and a tangible net worth of at least \$50,000.00. As of April 30, 2017, Amerilink was deficient in meeting the liquid asset requirement by \$13,181.93 and the tangible net worth requirement by \$4,030.54.

III.

Applicable Law

13. Financial Code section 17210 provides in pertinent part:

An escrow agent licensed on or after January 1, 1986, shall maintain at all times a tangible net worth of fifty thousand dollars (\$50,000), including liquid assets of at least twenty-five thousand dollars (\$25,000) in excess of current liabilities.

14. Financial Code section 17414 provides in pertinent part:

(a) It is a violation for any person subject to this division or any director, stockholder, trustee, officer, agent, or employee of any such person to do any of the following:

(1) Knowingly or recklessly disburse or cause the disbursement of escrow funds otherwise than in accordance with escrow instructions, or knowingly or recklessly to direct, participate in, or aid or abet in a material way, any activity which constitutes theft or fraud in connection with any escrow transaction.

(2) Knowingly or recklessly make or cause to be made any misstatement or omission to state a material fact, orally or in writing, in escrow books, accounts, files, reports, exhibits, statements, or any other document pertaining to an escrow or escrow affairs.

....

15. Financial Code section 17423 provides in pertinent part:

(a) The commissioner may, after appropriate notice and opportunity for hearing, by order, ... bar from any position of employment, management, or control any escrow agent, or any other person, if the commissioner finds either of the following:

(1) That the ...bar is in the public interest and that the person has committed or caused a violation of this division or rule or order of the commissioner, which violation was either known or should have been known by the person committing or causing it or has caused material damage to the escrow agent or to the public.

....

(b) Within 15 days from the date of a notice of intention to issue an order pursuant to subdivision (a), the person may request a hearing under the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Upon receipt of a request, the matter shall be set for hearing to commence within 30 days after such receipt unless the person subject to this division consents to a later date. If no hearing is requested within 15 days after the mailing or service of such notice and none is ordered by the commissioner, the failure to request a hearing shall constitute a waiver of the right to a hearing.

(c) Upon receipt of a notice of intention to issue an order pursuant to this section, the person who is the subject of the proposed order is immediately prohibited from engaging in any escrow processing activities, including disbursing any trust funds in the escrow agent's possession, custody or control, and the financial institution holding trust funds shall be so notified by service of the notice, accusation and other administrative pleadings. The prohibition against disbursement of trust funds may be set aside, in whole or in part, by the commissioner for good cause.

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16. Financial Code section 17608 provides in pertinent part:

The commissioner may, after notice and a reasonable opportunity to be heard, suspend or revoke any license if he finds that:

...

(b) The licensee has violated any provision of this division or any rule made by the commissioner under and within the authority of this division.

17. California Code of Regulations, title 10, section 1738 provides in pertinent part:

(a) All money deposited in such "trust" or "escrow" account shall be withdrawn, paid out, or transferred to other accounts only in accordance with the written escrow instructions of the principals to the escrow transaction or the escrow instructions transmitted electronically over the Internet executed by the principals to the escrow transaction or pursuant to order of a court of competent jurisdiction.

....

18. California Code of Regulations, title 10, section 1738.1 provides:

An escrow agent shall not withdraw, pay out, or transfer monies from any particular escrow account in excess of the amount to the credit of such account at the time of such withdrawal, payment, or transfer.

19. California Code of Regulations, title 10, section 1738.2 provides:

An escrow agent shall use documents or other property deposited in escrow only in accordance with the written escrow instructions of the principals to the escrow transaction or the escrow instructions transmitted electronically over the Internet executed by the principals to the escrow transaction, or if not otherwise directed by written or electronically executed instructions, in accordance with sound escrow practice, or pursuant to order of a court of competent jurisdiction.

IV.

Prayer

20. Based on the foregoing, the Commissioner finds that Amerilink Escrow, Inc., Vinh Phan and Quang Phan, also known as Adan Phan, have violated Financial Code section 17414, subdivisions (a)(1) and (2) and California Code of Regulations, title 10, section 1738 and Amerilink

1 Escrow, Inc. has violated Financial Code section 17210 and California Code of Regulations, title 10,
2 sections 1738.1 and 1738.2.

3 21. The Commissioner further finds that based upon Amerilink Escrow, Inc., Vinh Phan
4 and Quang Phan, also known as Adan Phan's, numerous and repeated violations of the Escrow Law,
5 including misappropriation of trust funds and falsifying escrow records, it is in the best interests of
6 the public to permanently bar Vinh Phan and Quang Phan, also known as Adan Phan, from any
7 position of employment, management, or control of an escrow agent pursuant to Financial Code
8 section 17423 and to revoke Amerilink Escrow, Inc.'s escrow agent's license pursuant to Financial
9 Code section 17608.

10 WHEREFORE, IT IS PRAYED THAT:

11 1) Vinh Phan be barred from any position of employment, management, and control of
12 any escrow agent;

13 2) Quang Phan, also known as Adan Phan, be barred from any position of employment,
14 management, and control of any escrow agent; and

15 3) Amerilink Escrow, Inc.'s escrow agent license be revoked.

16
17 Dated: May 22, 2018
18 Los Angeles, California

JAN LYNN OWEN
Commissioner of Business Oversight

19 By _____
20 JOHNNY VUONG
21 Senior Counsel
22 Enforcement Division
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